

REMARKS

Applicants thank Examiner O'Hern for the analysis set forth in the non-final Office Action dated December 22, 2010. As noted in the Office Action, the objections and rejections set forth in the previous Office Action, mailed May 7, 2010, were withdrawn. However, new rejections were presented, as will be discussed below. Applicants have amended Claims 1 and 11 and have added new Claim 19. Claims 1 and 4–19 are therefore now pending in the present application. Reconsideration of the application is respectfully requested in view of the foregoing amendments and the following remarks.

Claim Rejection Under 35 U.S.C. § 103

Claims 1 and 4–18 currently stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Bickett (U.S. Patent No. 1,453,123) in view of Crook (U.S. Patent No. 5,482,754) and Kent (U.S. Patent No. 5,924,694). In the interest of expediting prosecution to allowance, applicants have amended independent Claims 1 and 11 as indicated above and discussed below.

Bickett ('123)

Applicants respectfully submit that Bickett ('123) does **not** teach an "access mat" as is asserted in the December 22, 2010, Office Action on page 3, first paragraph. Instead, Bickett teaches a "mold"; see, e.g., the title "Mold for Rubber Mats, Etc." as well as throughout the description of Bickett, such as page 1, line 77, to page 2, line 13. Applicants respectfully note that the Office Action did not list any reasons why one of ordinary skill in the art of "access mats" for forming a roadway or pathway for vehicles and people, and which traditionally had been wooden mats, would look to Bickett's molds when designing such access mat for forming a roadway or pathway for vehicles and people. Bickett does not teach anything about the structure of a mat (only of a mold), nor does it teach anything with respect to forming a "roadway" for

"vehicles" or with respect to provide a "platform" over unstable "terrain." It simply is not directed to the problem at hand – i.e., an access mat for forming a roadway or pathway for vehicles and people.

Applicants note that the Office Action states that the grid in Bickett could be considered to be comprised of two grids in the *same plane* making up every other wire or any combination of wires and any arbitrary spacing between the wires, depending on which wires are selected for each grid within the larger grid. Moreover, the Office Action states that the term "access mats" as used in the preamble of the claims is broad, since the claims do not state what the access is for.

Therefore, in the interest of a speedy allowance, applicants have amended independent Claims 1 and 11 to (i) clarify that a feature of the claimed invention is that the first and second rigidifying grids are each in their own, *different plane* and (ii) clarify that the access mats are for forming *a roadway or pathway for vehicles and people*. The addition of these features to claims 1 and 11 adds no new matter and results in the cited art no longer making obvious the present invention as claimed in amended Claims 1 and 11 or in any of the claims that depend therefrom (Claims 4–10 and 12 –18).

Kent ('694)

As noted in the December 22, 2010, Office Action, Kent ('694) was no longer cited as a primary reference and applicants' arguments were therefore considered moot. However, applicants respectfully note that Kent ('694) was cited as a secondary reference and therefore repeats the arguments with respect to Kent ('694) in that regard. Applicants respectfully submit that Kent ('694) does not teach a rubber "mat," as was again asserted in the December 22, 2010, Office Action on page 4, third paragraph. Instead, Kent teaches a "ballistic target" and simply has nothing at all to say about "access mats," including for forming *a roadway or pathway for*

vehicles and people. As such, a reference to Kent is improper and a person of ordinary skill in the art of "access mats" would not combine the teachings of Bickett ('123) with those of Kent ('694).

As noted above, Kent does not teach anything about mats, including "access" mats. Instead, Kent relates to ballistic targets and marksmanship targets (see "Field of the Invention," Col. 1, lines 3–4). More specifically, Kent is directed to solving the problem of prior art "lifelike targets" (see col. 1, line 34) not being very durable or re-usable to any great extent (see Col. 1, lines 39–42) when shot at. Kent further teaches that its ballistic targets are preferably formed into a three-dimensional (3D) humanoid figure that can be set in a standing position, can hold a desired weapon, or can be placed into various threatening postures (see Col. 4, line 42, to Col. 5, line 19). A 3D humanoid figure is nothing like a generally flat and planar access mat used to support vehicles or to provide a platform over unstable terrain.

Kent simply does not teach a "mat" of any kind, let alone an "access mat" for forming a roadway or pathway for vehicles and people or to provide a platform over unstable terrain. In fact, the word "mat" does not appear anywhere in Kent. The words "access," "road," "roadway," "path," "pathway," "vehicle," "platform" and "terrain" and "ground" are likewise absent in Kent. Instead, the specification of Kent mentions "target," "ballistic fabric," "three dimensional humanoids" and "bullets."

Kent simply does not teach anything with respect to forming a "roadway" for "vehicles" or with respect to providing a "platform" over unstable "terrain." It simply is not directed to the problem at hand. For these reasons, applicants respectfully submit that a person of ordinary skill in the art of "access mats" for forming a roadway or pathway for vehicles and people would not look to Kent for anything.

Applicants respectfully note that the Office Action did not list any reasons why one of ordinary skill in the art of "access mats" would look to Kent's humanoid ballistic targets when designing an access mat to support a vehicle over unstable terrain. An Examiner must establish "an apparent reason to combine . . . known elements," must provide "some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness," and must "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does" (see *KSR Int'l Co. v. Teleflex, Inc.*, No 04-1350 (U.S. Apr. 30, 2007), reported at 550 U.S. 398 (2007)).

An Examiner must also make "explicit" this rationale of "the apparent reason to combine the known elements in the fashion claimed," including a detailed explanation of "the effects of demands known to the design community or present in the marketplace" and "the background knowledge possessed by a person having ordinary skill in the art." (*KSR Opinion* at p. 14). Applicants respectfully submit that anything less than such an explicit analysis is not sufficient to support a prima facie case of obviousness.

Moreover, the USPTO's own May 3, 2007, Memorandum regarding KSR (i.e., Margaret Focarino, Deputy Commissioner of Operations, USPTO "Supreme Court decision on *KSR Int'l Co. v. Teleflex, Inc.*," internal memo to USPTO technology art unit directors, May 3, 2007) states, in bold, that "***in formulating a rejection under 35 U.S.C. § 103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed.***"

Applicants respectfully submit that, because the Office Action did not list any reasons why one of ordinary skill in the art of "access mats," including for forming a roadway or pathway for vehicles and people, would look to Kent's 3D humanoid ballistic targets when designing an access mat to support a vehicle over unstable terrain, the Office Action does not

comply with the USPTO's own internal instructions, let alone with the requirements laid out by the Supreme Court in *KSR Int'l Co. v. Teleflex, Inc.*, No. 04-1350 (U.S. Apr. 30, 2007).

Neither Bickett nor Kent teaches a rubber access mat for forming *a roadway or pathway for vehicles and people* and having a first and second rigidifying grid, each in their own *different plane*. In fact, neither Bickett nor Kent teaches anything with respect to forming a "roadway" for "vehicles" or with respect to providing a "platform" over unstable "terrain." They are simply not directed to the problem at hand.

Moreover, the teachings of Crook ('754) do not overcome the deficiencies of Bickett and Kent as discussed above.

Therefore, it is respectfully submitted that the present invention, as claimed in amended Claims 1 and 4–18, is patentable.

For at least the aforementioned reasons and amendments, reconsideration and withdrawal of the rejection of Claims 1 and 4–18 under 35 U.S.C. § 103(a) are respectfully requested.

New Claim 19

Applicants have added new independent Claim 19 to more clearly distinguish the novel and inventive features of the access mats forming a roadway for vehicles and people. This claim adds no new matter to the specification and merely acts to more clearly distinguish the various novel and inventive features of the invention. Support for the fact that the rubber access mats are used to make such a roadway can be found in the description at a number of different places, including on page 1, lines 5–6.

New Claim 19 also includes the above-noted inventive feature of the two rigidifying grids being in *different* planes.

Applicants most respectfully submit that, for the reasons given above, reference to Kent ('694) would be improper and that a person of ordinary skill in the art of "access mats"

would simply not combine the teachings of Kent ('694) for a "ballistic target" with those of Bickett ('123). Moreover, the various Office Actions to date have not provided any reasons why one of ordinary skill in the art of "access mats" would look to either Kent's 3D humanoid ballistic targets or to Bickett's molds when designing an access mat to support a vehicle over unstable terrain.

Applicants also respectfully submit that Crook ('754) fails to teach all of the claimed features of new Claim 19, including failing to teach a pair of rigidifying grids of reinforcing wire embedded in *different planes* within the rubber slab and each consisting of a plurality of parallel spaced wires embedded within the rubber slab and extending between the opposed side edges for most of the width of the rubber slab and a plurality of parallel spaced wires embedded within the rubber slab and extending between the opposed end edges for most of the length of the rubber slab.

Accordingly, it is believed that new Claim 19 is in condition for allowance.

Standards for Patentability

An applicant for a patent is entitled to the patent unless the application fails to meet the requirements established by law. It is the Commissioner's duty (acting through the examining officials) to determine that all requirements of the Patent Act are met. The burden is on the Commissioner to establish that the applicant is not entitled under the law to a patent. . . . In rejecting an application, factual determinations by the PTO must be based on a preponderance of the evidence, and legal conclusions must be correct.

In re Oetiker, 977 F.2d 1443, 1449, 24 USPQ2d 1443, 1447, 24 USPQ2d at 1447 (Fed. Cir. 1992) (Judge Plager concurring).

CONCLUSION

In view of the foregoing amendments and arguments, it is respectfully submitted that the present application is in condition for allowance. Applicant, therefore, requests the early issue of a Notice of Allowance.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Kevan L. Morgan", is written over the printed name.

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